

Response  
Applicants: Nicola Ghelli et al.  
Serial No.: 09/921,012

Attorney Docket: DID1040US

### REMARKS

Restriction to one of the following inventions has been required by the Examiner: claims 1 to 18 (Group I), drawn to a blood pump, and claims 19 to 21 (Group II), drawn to a blood pump and oxygenator.

Claims 1 to 21 are pending.

Applicants respectfully traverse this restriction requirement. In response to this restriction requirement, Applicants provisionally elect, with traverse, Group I (claims 1 to 18), drawn to a blood pump.

The restriction requirement of Groups I and II is improper because the Examiner has not shown that examining the subject matter of Groups I and II would constitute a serious burden. The search of subject matter of Groups I and II should not constitute a burden, since they are classified in the same class.

M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Thus for a restriction requirement to be valid, the Examiner must establish the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden (M.P.E.P. § 803).

The Examiner has not shown that the second requirement has been met. The Examiner has indicated that Groups I and II are in the same class and different subclasses. Applicants respectfully submit that a search involving only two subclasses of related subject matter does not constitute a serious burden on the Examiner.

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Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction requirement as applied to the subject matter of Groups I and II and request that the subject matter of these groups be examined together.

If any additional fees are due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 16-2312. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our deposit account.

Respectfully submitted,

Date: 10/6/03

By

  
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